

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BYBEE FARMS LLC, et al.,
Plaintiffs,

v.

SNAKE RIVER SUGAR COMPANY, et
al.,
Defendants.

No. CV-06-5007-FVS

TENTATIVE CONCLUSIONS RE
PLAINTIFFS' THIRD CAUSE
OF ACTION

THIS MATTER comes before the Court based upon the defendants' motion for summary judgment. They are represented by J. Walter Sinclair. The plaintiffs are represented by Thomas Banducci. The following are the Court's tentative conclusions regarding the plaintiffs' third cause of action.

BACKGROUND

Each of the plaintiffs -- Bybee Farms LLC, Duane Munn & Sons Farms LLC, and Neal Bybee -- became a member of the Snake River Sugar Company ("SRSC" or "Cooperative") by purchasing one share of its Common Stock and multiple shares of its Patron Preferred Stock. Each plaintiff's entry into the SRSC was memorialized by means of a contract that is entitled "Subscription Agreement." Paragraph 13(b) of each Subscription Agreement states, "The Undersigned may sell its shares of Patron Preferred Stock to one or more existing members of the Cooperative . . . , in each case subject to approval by the Board of Directors." (Subscription Agreement, ¶ 13(b), at 6.) After

1 purchasing stock in the Cooperative, each plaintiff entered into a
2 Grower Agreement. Paragraph 1 states in part:

3 The Grower owns and has the growing rights to shares of
4 Patron Preferred Stock of the Cooperative (here-in [sic]
5 called "Quota") as reflected on the records of the
6 Cooperative. Grower recognizes such Quota as the right and
7 obligation to grow, or cause to be grown, one (1) acre of
8 sugarbeets per share for delivery to the Cooperative each
9 crop year.

10 (Grower Agreement, ¶ 1, at 1.)

11 In the States of Idaho and Washington, every contract contains an
12 implied contract of good faith and fair dealing. See, e.g., *Idaho*
13 *First Nat'l Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 288, 824
14 P.2d 841, 849 (1991); *Badgett v. Security State Bank*, 116 Wn.2d 563,
15 807 P.2d 356 (1991). The Supreme Court of the State of Idaho has
16 observed that Idaho's "analysis and definition of the implied covenant
17 of good faith and fair dealing is consistent with surrounding states."
18 *Idaho First Nat'l Bank*, 121 Idaho at 288. Indeed, in *Idaho First*
19 *Nat'l Bank*, the Idaho Supreme Court quoted the following passage from
20 *Badgett* with approval:

21 There is in every contract an implied duty of good faith and
22 fair dealing. This duty obligates the parties to cooperate
23 with each other so that each may obtain the full benefit of
24 performance. . . . However, the duty of good faith does
25 not extend to obligate a party to accept a material change
26 in the terms of its contract. . . . Nor does it "inject
substantive terms into the parties' contract." Rather, it
requires only that the parties perform in good faith the
obligations imposed by their agreement. . . . Thus, the
duty arises only in connection with terms agreed to by the
parties.

121 Idaho at 288 (quoting *Badgett*, 116 Wn.2d at 569) (citations

omitted by, and emphasis added by, the Idaho Supreme Court).¹

The plaintiffs allege that the SRSC breached duties of good faith and fair dealing that are implied in the Grower and Subscription Agreements. Insofar as the Grower Agreements are concerned, the plaintiffs allege that, during 2004 and 2005, the SRSC improperly prohibited them from growing one acre of sugarbeets for each acre of Patron Preferred Stock that they held. The plaintiffs further allege that agents of the SRSC pressured them to sell their shares of Patron Preferred Stock, made a disingenuous offer to purchase their shares, refused to purchase their shares, falsely assured them that they would not be penalized if they refrained from growing sugarbeets during 2005, and improperly invoked penalty provisions in the Grower Agreements. Insofar as the Subscription Agreements are concerned, the plaintiffs allege that the SRSC frustrated their efforts to sell their shares of Patron Preferred Stock to other members of the SRSC. The defendants move for summary judgment.

IMPLIED DUTIES OF GOOD FAITH AND FAIR DEALING

Grower Agreements

1. Acreage reductions

By the end of 2003, the SRSC was producing more sugarbeets than its sister company, The Amalgamated Sugar Company ("TASCO"), could process and sell profitably. During both 2004 and 2005, the SRSC's Board of Directors decided to limit the Cooperative's production of sugarbeets by restricting the number of acres that its members could

¹Since there is no conflict between the law of the States of Idaho and Washington, choice of law analysis is unnecessary. Local law applies. *Erwin v. Cotter Health Centers*, 161 Wn.2d 676, 692, 167 P.3d 1112 (2007).

1 plant. Even assuming, for purposes of argument, that the SRSC
2 violated the Grower Agreements' one-acre-per-share provision, a
3 rational jury would be unable to find that the Cooperative acted in
4 bad faith. First, there is no evidence that the SRSC fabricated the
5 existence of a sugar surplus or its potentially damaging effect upon
6 the Cooperative. To the contrary, it is undisputed that the SRSC had
7 a surplus of refined sugar by the end of 2003 and that the surplus
8 created serious financial problems for the Cooperative. Second, there
9 is no evidence that the SRSC acted deviously in responding to the
10 problem. To the contrary, the SRSC's decision to limit production was
11 made through its normal decision-making process; a process in which
12 the plaintiffs had a small voice. Third, there is no evidence that
13 the SRSC's response was economically unreasonable. To the contrary,
14 during 2004 and the first eight months of 2005, it appeared that the
15 Cooperative had little hope of increasing sales. Consequently, its
16 only apparent option was to limit production of sugarbeets. Finally,
17 there is no evidence that the Cooperative imposed the disputed acreage
18 reductions as a result of ill will toward the plaintiffs. For
19 example, the SRSC's motives would be suspect if the limits applied
20 only to the plaintiffs; but that was not the case, the limits applied
21 to all of the SRSC's growers.

21 *2. Pressure to sell stock*

22 The plaintiffs allege that, on January 5, 2005, Ralph Burton told
23 them that the SRSC intended to make it prohibitively expensive for
24 them to continue growing sugarbeets within three years by requiring
25 them to pay for services that the Cooperative was then providing at no
26 charge. The plaintiffs allege that Mr. Burton made this statement in
order to pressure them into selling their shares of Patron Preferred

1 Stock to the SRSC, i.e., terminating their contractual relationship
2 with the Cooperative. Put somewhat differently, the plaintiffs allege
3 that they were subjected to duress.

4 Depending upon what Mr. Burton actually said, his statement about
5 the SRSC's future intentions could have constituted an attempt to
6 obtain release from contractual duties by means of a threat. Cf. 2
7 Joseph M. Perillo & Helen Hadjiyannakis Bender, *Corbin on Contracts* §
8 7.21, at 461-69 (rev. ed. 1995) (discussing bad-faith demands for
9 contract modifications). However, "[a] threat, even if improper, does
10 not amount to duress if the victim has a reasonable alternative to
11 succumbing and fails to take advantage of it." *Restatement (Second)*
12 *of Contracts* § 176 cmt. b (1981). The plaintiffs had a reasonable
13 alternative. Like their fellow Washington growers, they could have
14 planted sugarbeets during 2005. Thus, even if Mr. Burton made the
15 statement attributed to him, and even if the statement constituted a
16 threat, the plaintiffs cannot prove duress. Cf. *Retail Clerks Health*
17 *& Welfare Trust Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939,
18 943-44, 640 P.2d 1051 (1982) ("circumstances must demonstrate a person
19 was deprived of his free will at the time he entered into the
20 challenged agreement in order to sustain a claim of duress"); *Nord v.*
21 *Eastside Assn. Ltd.*, 34 Wn. App. 796, 798-99, 664 P.2d 4 (1983)
22 (person alleging business compulsion must prove that offending party
23 caused or contributed to his vulnerability and exerted the pressure
24 that brought about the decision to enter into the agreement).

24 3. Response to offer

25 The plaintiffs allege that, on January 5th, Mr. Burton promised
26 them that the SRSC would purchase their shares of Patron Preferred
Stock at a reasonable price if they ceased growing sugarbeets. The

1 plaintiffs concede that Mr. Burton lacked actual authority to make the
2 promise.² Not knowing this, say the plaintiffs, they submitted a
3 memorandum to the executive committee setting forth the terms upon
4 which they were willing to sell. The executive committee rejected
5 their terms, but did not inform them of its decision. According to
6 the plaintiffs, the executive committee acted in bad faith by refusing
7 to purchase their shares; and then compounded its bad faith by failing
8 to inform them of its decision.

9 Neither of the plaintiffs' allegations is sufficient to withstand
10 summary judgment. To begin with, an implied duty of good faith
11 "'arises only in connection with terms agreed to by the parties.'" *Idaho First Nat'l Bank*, 121 Idaho at 288 (quoting *Badgett*, 116 Wn.2d
12 at 569). As the defendants point out, neither the Subscription
13 Agreements nor the Grower Agreements contain provisions obligating the
14 SRSC to negotiate the purchase of the plaintiffs' shares of Patron
15 Preferred Stock. *Cf. Keystone Land & Dev. Co. v. Xerox Corp.*, 152
16 Wn.2d 171, 179, 94 P.3d 945 (2004) (no contract to negotiate a future
17 contract where the "parties did not exchange promises to conform to a
18 specific course of conduct during negotiations, such as negotiating in
19 good faith, exclusively with each other, or for a specific period of
20 time"). Absent specific provisions regarding the purchase of shares,
21 a duty to negotiate in good faith cannot be implied. *See id.* at 177
22 ("there is no 'free-floating' duty of good faith and fair dealing that
23 is unattached to an existing contract" (quoting *Badgett*, 116 Wn.2d at
24 570)). Since the SRSC was under no obligation to negotiate a purchase

25
26 ²Apparent authority is a different matter. The plaintiffs
make no concession in that regard.

1 of the plaintiffs' shares, it was under no obligation to inform them
2 of its rejection of their counteroffers. *Cf. Saluteen-Maschersky v.*
3 *Countrywide Funding Corp.*, 105 Wn. App. 846, 853, 22 P.3d 804 (2001)
4 ("Failure to reject an offer is not equivalent to assent of that
5 contract since silence is acceptance only where there is a duty to
6 speak.").

7 *4. False assurances*

8 During the Winter or Spring of 2005, Brandon Munn questioned Vic
9 Jaro, SRSC's Vice President of Agriculture, about the contractual
10 ramifications of his family's decision not to plant sugar beets during
11 2005. The following is Brandon's recollection of one part of the
12 conversation:

13 In the end, . . . I asked him, if we don't grow these
14 sugarbeets, which we're not planning on doing, will it look
15 negatively on us if this buyout doesn't happen until later,
16 and he says nope, it won't look negatively, we know the
17 buyout's in progress, just because it's not finalized today
18 doesn't mean you'll be penalized later.

19 The Court has tentatively concluded that genuine issues of material
20 fact exist with respect to whether Mr. Jaro assured Brandon that Duane
21 Munn & Sons Farms LLC would not be penalized if the Munn family
22 refrained from planting sugarbeets during 2005, and, assuming that Mr.
23 Jaro gave such an assurance, whether the Munn family justifiably
24 relied upon it.

25 The Court's tentative conclusion with respect to the plaintiffs'
26 promissory-estoppel claim is not the end of the matter. The
plaintiffs also allege that Mr. Jaro and other agents of the SRSC
acted in bad faith during the Spring of 2005. According to the
plaintiffs, Messrs. Jaro and Mr. Burton must have realized that the

1 SRSC would gain a significant negotiating advantage if they refrained
2 from planting sugarbeets. Without a commitment on the part of the
3 executive committee to purchase their shares, observe the plaintiffs,
4 their decision to refrain from planting exposed them to the penalties
5 set forth in the Grower Agreements. The plaintiffs argue that the
6 existence of those penalties has given the SRSC enormous leverage. In
7 their opinion, not only did Messrs. Burton and Jaro anticipate this
8 contingency, but also they sought to bring it about by making
9 statements which falsely suggested that the SRSC was interested in
10 purchasing their shares.

11 The evidence bearing upon the preceding allegations is mixed. As
12 the Court explained in its order granting Mr. Burton's motion for
13 summary judgment, his comments to the plaintiffs after the January 5th
14 meeting were fairly cautious. After that point in time, he neither
15 asked them to refrain from planting sugarbeets, nor did he encourage
16 them to think that a purchase agreement was imminent. By contrast,
17 Mr. Jaro allegedly spoke with Brandon Munn about his family's decision
18 not to plant sugarbeets during 2005. If one accepts Brandon's
19 recollection of the conversation, Mr. Jaro said that the Munn family's
20 decision "won't look negatively[.] [W]e know the buyout's in
21 progress[;] just because it's not finalized today doesn't mean you'll
22 be penalized later." At the time Mr. Jaro allegedly made those
23 statements, he knew that Duane Munn & Sons Farms LLC was contractually
24 obligated to deliver its quota of sugarbeets to TASCOS at the
25 conclusion of the 2005 growing season. Consequently, Mr. Jaro was
26 subject to an implied duty, viz., to candidly answer Brandon's
questions regarding his family's performance of its contractual
obligations. A rational jury arguably could find that at the time Mr.

1 Jaro allegedly made the statements attributed to him by Brandon, he
2 knew that the executive committee had rejected the plaintiffs'
3 counteroffers and that the SRSC probably would not purchase their
4 shares of Patron Preferred Stock. Were a jury to determine that Mr.
5 Jaro possessed such knowledge when he spoke to Brandon, the jury could
6 find that Mr. Jaro acted in bad faith by creating a false impression
7 that Duane Munn & Sons Farms LLC was going to be relieved of its
8 contractual obligations.

9 *5. Invoking penalty provisions*

10 Pursuant to paragraphs 7 and 8 of each Grower Agreement, the SRSC
11 may impose penalties in the event a member fails to deliver his quota
12 of sugarbeets. The fact that the Grower Agreement confers discretion
13 upon the SRSC means that the SRSC has an implied duty to exercise its
14 authority in good faith. *Cf. Goodyear Tire & Rubber Co. v. Whiteman*
15 *Tire*, 86 Wn. App. 732, 738, 935 P.2d 628 (1997) (hereinafter
16 "*Goodyear*") ("The covenant of good faith applies when the contract
17 gives one party discretionary authority to determine a contract
18 term[.]"). During the Winter and Spring of 2005, employees of the
19 SRSC who worked with the plaintiffs observed that they were neither
20 planting nor preparing to plant sugarbeets. The employees who noticed
21 the plaintiffs' lack of activity allegedly communicated this
22 information to their superiors. Since the SRSC depends upon its
23 members' annual deliveries of sugarbeets, the plaintiffs' failure to
24 plant or prepare to plant jeopardized the SRSC's economic expectations
25 under the Grower Agreements. Nevertheless, despite the contractual
26 and financial implications of the plaintiffs' inactivity, no one asked
them why they weren't planting. No one informed them that their
counteroffers had been rejected, and no one reminded them that their

1 failure to plant violated their respective Grower Agreements.
 2 Instead, the SRSC's officers and employees either remained silent or,
 3 in at least one instance, allegedly made misleading statements. Given
 4 the SRSC's and the plaintiffs' common interest in maintaining the
 5 financial well-being of the Cooperative, a rational jury could find
 6 that the SRSC violated its duty of good faith by remaining silent
 7 during 2005 until it was too late for the plaintiffs to plant and then
 8 penalizing them for failing to do so. *Cf. Restatement (Second) of*
 9 *Contracts* § 205 cmt. a (1981) ("[g]ood faith . . . enforcement of a
 10 contract emphasizes faithfulness to an agreed common purpose and
 11 consistency with the justified expectations of the other party").³

12 Subscription Agreements

13 Paragraph 13(b) of each Subscription Agreement states, "The
 14 Undersigned may sell its shares of Patron Preferred Stock to one or
 15 more existing members of the Cooperative . . ., in each case subject
 16 to approval by the Board of Directors." This provision confers
 17 discretion upon the Board, e.g., to grant or deny a grower's request
 18 to sell his shares. As a result, the Board is bound by an implied
 19 covenant of good faith and fair dealing. See *Goodyear*, 86 Wn. App. at
 20 738. In order to fulfill its implied obligations, the Board must
 21 exercise its authority in a manner that is consistent "with the
 22 justified expectations" of the SRSC's growers. *Restatement, supra*, §
 23 205 cmt. a. Washington appellate courts apply the covenant of good
 24 faith and fair dealing in a balanced manner. As one court explained,
 while the covenant "casts on each party a duty not to interfere with

25 ³The Washington Court of Appeals has quoted part of this
 26 definition with approval. *Frank Coluccio Constr. Co. v. King*
County, 136 Wn. App. 751, 766, 150 P.3d 1147 (2007).

1 the other party's performance[,] . . . [i]t does not . . . cast on
2 either party a duty to affirmatively assist in the other party's
3 performance." *State of Washington v. Trask*, 91 Wn. App. 253, 272-73,
4 957 P.2d 781, 974 P.2d 1269 (1998). Applying those principles to the
5 facts of this case, it is clear that the Board did not have a duty to
6 locate SRSC growers who were willing to purchase the plaintiffs'
7 shares. Nevertheless, the Board's freedom of action was subject to
8 significant constraints. It could neither unreasonably interfere with
9 the plaintiffs' efforts to find suitable buyers, nor could it
10 unreasonably withhold approval of a proposed sale.

11 The parties disagree with respect to whether the Board acted
12 unreasonably. The plaintiffs allege that the Board denied them access
13 to a list of SRSC growers in eastern Idaho, actively discouraged SRSC
14 growers in eastern Idaho from purchasing their shares, and imposed
15 conditions that made it impossible for them to arrange sales. The
16 defendants dispute each of the plaintiffs' contentions. Furthermore,
17 the defendants allege that they had compelling business reasons for
18 prohibiting the plaintiffs from selling shares to SRSC growers in
19 eastern Idaho. As the plaintiffs note, sugarbeets must be processed.
20 Processing plants have been built in locations that will best serve
21 the largest number of SRSC growers. Allowing a grower in eastern
22 Washington to sell his shares -- *i.e.*, his right to produce sugarbeets
23 -- to a grower in eastern Idaho could result in the underutilization
24 of one processing plant and the overutilization of another. In the
25 defendants' opinion, this could have a disastrous impact upon the
26 Cooperative.

The plaintiffs do not seem to be contesting the defendants'
utilization argument. To the contrary, they seem to concede that

1 transferring sugarbeet production from one geographic area to another
2 could result in an economically inefficient use of the SRSC's
3 processing plants. Even so, they insist that a jury issue exists.
4 According to the plaintiffs, there is evidence that the Board
5 intentionally frustrated their efforts to sell their shares.
6 Apparently, the only SRSC growers who potentially were interested in
7 purchasing the plaintiffs' shares were growers whose farms are located
8 in eastern Idaho. The Board would not give the plaintiffs a list of
9 the names of eastern-Idaho growers. In addition, the Board allegedly
10 told eastern-Idaho growers that it would not allow them to purchase
11 the plaintiffs' shares. Finally, the Board allegedly told the
12 plaintiffs that it would not approve any share sales until after they
13 submitted their "make-whole" payments.⁴ Viewing the record in the
14 light most favorable to the plaintiffs, a rational jury could find
15 that the Board never had any intention of allowing the plaintiffs to
16 sell their shares to growers outside the State of Washington. That
17 does not necessarily mean a jury issue exists. The plaintiffs have
18 not identified any evidence rebutting the defendants' assertion that
19 permitting the plaintiffs to sell their shares to eastern-Idaho
20 growers would have disrupted the SRSC's sugarbeet-processing system;
21 which, according to the defendants, would have undermined the
22 financial well-being of the Cooperative. Absent evidence rebutting
23 the defendants' utilization argument, the plaintiffs cannot prove that

23 ⁴It is unclear whether the Board told the plaintiffs that it
24 would not consider sales until after they submitted their make-
25 whole payments, or whether the Board told them that they had to
26 submit their make-whole payments when the sales closed, or
whether the Board's statements regarding make-whole payments were
ambiguous.

1 the Board abused the discretion conferred by paragraph 13(b) of the
2 Subscription Agreements. After all, the only expectations that the
3 Board was obligated to respect were justifiable ones. The plaintiffs
4 could not have justifiably expected the Board to approve a sale of
5 shares that would damage the SRSC. Thus, unless a rational jury could
6 find that the plaintiffs' attempt to sell their shares to eastern-
7 Idaho growers would not have harmed the SRSC, the plaintiffs cannot
8 prove that the Board abused its discretion by blocking such sales. As
9 the record now stands, a rational jury could not find for the
10 plaintiffs on this point.⁵

11 **TENTATIVE CONCLUSIONS**

12 1. That the defendants are entitled to summary judgment with
13 respect to the plaintiffs' allegations that the SRSC or its agents
14 acted in bad faith by unilaterally imposing acreage reductions,
15 pressuring the plaintiffs to sell their shares of Patron Preferred
16 Stock, failing to respond to their counteroffers, and frustrating
their efforts to sell their shares to growers in eastern Idaho.

17 2. That genuine issues of material fact exist with respect to the
18 plaintiffs' allegations that the SRSC or its agents acted in bad faith
19 by providing misleading assurances to Brandon Munn and by invoking the
20

21 ⁵One other issue remains. During 2006, the parties
22 discussed resolution of their dispute. They may have exchanged
23 offers of settlement. At some point, the SRSC told the
24 plaintiffs that it would not pay them anything if they kept
25 trying to sell their shares to eastern-Idaho growers. The
26 plaintiffs allege that the SRSC's demand violated an obligation
to negotiate in good faith. They are incorrect. As explained
above, neither the Subscription Agreements nor the Grower
Agreements create a duty to negotiate. See *supra* pp. 6-7.

1 penalties set forth in the Grower Agreements with respect to the 2005
2 crop year.

3 **CONCLUSIONS ARE TENTATIVE**

4 The preceding conclusions are tentative. After listening to oral
5 argument, the Court may modify or abandon some or all of them. Since
6 this is not an order, the Court will not consider a motion for
7 reconsideration. Nor will the Court consider supplemental evidence or
8 memoranda. The record is complete for purposes of dispositive
9 motions.

10 **THE DISTRICT COURT EXECUTIVE** is hereby directed to enter the
11 Court's tentative conclusions and furnish copies to counsel.

12 **DATED** this 8th day of August, 2008.

13 s/ Fred Van Sickle
14 Fred Van Sickle
Senior United States District Judge